

1 single minute of this.

2 And, again, without trying to get into the
3 minute aspects of it, I am making approximate
4 representations. I don't say exactly -- you know -- I
5 may have made a 30-second error or something like that.
6 And I don't want --

7 Q Sir, when I come here, I carry you through
8 the program logs that you've turned over to us --

9 A Um-hum.

10 Q -- we're going to be able to identify 102
11 minutes a week of news that'll be on the log with the
12 time and duration logged so that we can say that
13 there's exactly 102 minutes.

14 A Again, you're not listening -- not
15 exactly, but approximately on all these things, yes.
16 And it should be exact. These numbers are exact. I
17 counted them. But if I made a 30-second error or
18 whatever, I put in approximately to cover myself on
19 that. But these are fair representations of what I do.
20 And I think they're fair representations of what I did
21 over the entire license period.

22 JUDGE SIPPEL: Got anything more, Mr. --

23 BY MR. TILLOTSON:

24 Q Well, similarly -- just to make sure that
25 I understand what Mr. Lynch is saying, we go over to

1 Exhibit 6, page 18. It says that there were Easter
2 Seals, every year, 1986 to present. And there were 45
3 public service announcements a week.

4 Two to four week average. And there are -
5 - these are on the logs for WYLR. And we will find
6 those --

7 JUDGE SIPPEL: You answered -- The
8 Reporter has to pick up your answers; and you were
9 saying yes?

10 MR. LYNCH: No.

11 Again, I have made errors in logs.

12 JUDGE SIPPEL: I'm sorry. I wasn't trying
13 to put words in your mouth. I'm just looking at your
14 body language there.

15 MR. LYNCH: No.

16 Again, I have made errors in logs; but
17 when I have Mr. Dusenbery and Mr. Jacobson come down
18 here, I will swear to this as an approximation and so
19 will they. I sat down and --

20 JUDGE SIPPEL: -- page 18, now --

21 MR. LYNCH: Page 18. He was looking at
22 Easter Seals Volley Ball, Softball Marathons. The
23 dollar amounts that we raised from these things -- we
24 raised these dollar amounts. We --

25 JUDGE SIPPEL: I'm only -- I'm only

1 wanting to look at --

2 MR. LYNCH: There will not be --

3 JUDGE SIPPEL: I'm only interested in --
4 I'm only interested in finding out is there some
5 document that I have yet to see that we can look to to
6 test the claim that when you say that there's a
7 specific amount per week or per month or per day where
8 you looked in that document to put the number -- to
9 figure out and come up with these approximations or was
10 it that you talked to Mr. Dusenbery and you talked to
11 this employee and you basically all came up and said,
12 "Gee, that's about what we were doing, but there's no
13 document," which is it?

14 MR. LYNCH: It's a combination of all. I
15 sat down with them. I talked to the people at Easter
16 Seals who have records of the dollars that we
17 contributed. If you look at Exhibit 9, 1. It's got a
18 sworn affidavit correlating this thing. And either I,
19 my employees and the Easter Seals are in a conspiracy
20 or this is a very fair --

21 JUDGE SIPPEL: All right. That's -- I
22 don't mean to cut you off, but you're really getting
23 into cross examination -- beyond voir dire.

24 And I want to note, too, that he does have
25 on these -- again, on these linear columns that he has

1 on pages 6, 13 to 6, 22, the heading above that time is
2 approximate hours per --

3 MR. TILLOTSON: Your Honor, that's
4 correct.

5 What I'm trying to find out is to come up
6 with an approximation did Mr. Lynch look at the logs
7 over a period of time and say, "Well, it came out --
8 you know -- somewhere between 35 and 40. We'll say
9 37." Did he have something specific. 37 is not -- 37
10 minutes Monday to Friday is not really very
11 approximate.

12 MR. LYNCH: Yes, it is.

13 MR. SCHONMAN: Your Honor, may I interject
14 something?

15 JUDGE SIPPEL: Mr. Schonman, go right
16 ahead.

17 MR. SCHONMAN: It seems that the question
18 right now is whether these statements of fact that Mr.
19 Lynch has made in these linear columns, whether this
20 information here is relevant and should be received
21 into the record.

22 Now, Mr. Tillotson will have every
23 opportunity, as will the Bureau, to test the validity
24 of these statements either through cross examining Mr.
25 Lynch -- Well, I shouldn't say "either" -- through

1 cross examination of Mr. Lynch, as well as examination
2 of other witnesses. In other words, Mr. Lynch will
3 have to defend how he arrived at these numbers.

4 But the question now is whether this
5 information is relevant.

6 JUDGE SIPPEL: Well, I --

7 MR. SCHONMAN: And it certainly is.

8 JUDGE SIPPEL: That's absolutely right.
9 Although, there is a special question of reliability,
10 which is what I've taken that Mr. Tillotson was going
11 into with this witness.

12 But -- and also -- In any event, it's gone
13 as far as --

14 MR. TILLOTSON: I think -- yes.

15 JUDGE SIPPEL: Mr. Schonman is absolutely
16 correct. All right.

17 MR. TILLOTSON: And, Your Honor, I was
18 just trying to find out is there some document yet that
19 we might want to see.

20 JUDGE SIPPEL: I understand. I
21 understand. It makes me feel comfortable -- the more I
22 learn about how -- the more comfortable I feel -- in
23 September, so that I understand what's happening -- I
24 don't want to mislead you, is what I'm saying, but I --

25 All right. Now, so we've stricken one

1 sentence on paragraph 2 on Exhibit 6, page 1.

2 Now, is there -- I know what your problems
3 are with this Exhibit, Mr. Tillotson, but is there any
4 specific objection below all we've already stricken on
5 the first page?

6 MR. TILLOTSON: On the first page? On the
7 basis of relevance and also reliability, the last two
8 sentences of paragraph 2 about the weekend listenership
9 and there being surveys about listener habits, I don't
10 see the relevance of that. And I also would think we
11 need to know what -- you know -- if we're going to rely
12 on surveys, who and the what and the why, not just --
13 broad statement that, "We've conducted surveys."

14 JUDGE SIPPEL: Well, did you ask for --
15 did you ask for documents that would back up the
16 surveys?

17 MR. TILLOTSON: I never -- Your Honor, I
18 never thought --

19 JUDGE SIPPEL: Did you see any documents?

20 MR. TILLOTSON: I've seen no documents and
21 I've never understood any -- We asked for documents
22 relevant to his programming showing and it never
23 occurred to me that -- you know -- to ask for surveys -
24 - you know --

25 JUDGE SIPPEL: Well, let me ask -- Are

1 there documents that show this -- these surveys? Do
2 you see where we are --

3 MR. LYNCH: I have a number of surveys.
4 Actually, this refers more to the sentence that got
5 stricken, you know --

6 JUDGE SIPPEL: You mean the Arbitron book
7 ratings?

8 MR. LYNCH: Pardon?

9 JUDGE SIPPEL: The Arbitron ratings?

10 MR. LYNCH: The Arbitron ratings.

11 The point of it is that I put a bulk of my
12 non-entertainment programming, 6-A to 7-P, which is the
13 prime time and it wasn't throwing it at three o'clock
14 or Sunday mornings.

15 But just in the writing of this -- I can
16 see where it can be --

17 JUDGE SIPPEL: All right. Let me --

18 MR. LYNCH: -- mistaken.

19 JUDGE SIPPEL: -- see if I can
20 shortcircuit this.

21 Mr. Schonman, you have any points or
22 objections to this particular sentence?

23 MR. SCHONMAN: Well, I'm confused, quite
24 frankly.

25 When Mr. Lynch says that the last two

1 sentences of paragraph 2 relate to the sentence that
2 was stricken, my question is is Mr. Lynch referring to
3 the sentence, "WYLR now presents a block of public
4 affairs programming"?

5 MR. LYNCH: I am. That is on Sunday
6 evenings. It was in response to -- you know --
7 shortcomings on our program. We were trying to bolster
8 --

9 MR. SCHONMAN: Well, then, if it refers to
10 a sentence that's been stricken, then, those sentences,
11 too, should be stricken. That would be the Bureau's
12 position.

13 JUDGE SIPPEL: That's correct, because --
14 the primary reason being it's outside the relevant --

15 MR. LYNCH: I have no problem with that.

16 JUDGE SIPPEL: All right. No, I know. I
17 understand. Mr. Lynch is not trying to fight this --
18 trying to show we understand what we're striking before
19 we do it.

20 So I'm going to strike, then, all the way
21 to the end of paragraph No. 2, so that paragraph No. 2
22 now reads, "WYLR typically broadcasts news, sports,
23 weather and PSAs, most programs concentrated 6:00 a.m.
24 to 6:00 p.m, Monday through Saturday. These programs
25 are supplemented by other non-entertainment programs."

1 MR. SCHONMAN: Your Honor, if I can
2 interject --

3 JUDGE SIPPEL: Go right ahead.

4 MR. SCHONMAN: Am I to understand that the
5 first sentences of paragraph 2 refer to events during
6 the license term and is not characterized by what is
7 going on now at the station?

8 JUDGE SIPPEL: Well, I can do that in one
9 -- I read that to be what it typically broadcasts. It's
10 telling you what it typically does over -- it would
11 spill over into the now; but it would also cover the
12 relevant period.

13 MR. SCHONMAN: Well, perhaps I could ask
14 Mr. --

15 JUDGE SIPPEL: But if we can ask Mr. Lynch
16 --

17 MR. SCHONMAN: Please. Yes.

18 Do the first two sentences of paragraph 2
19 refer to what the station is doing now exclusively or
20 does it include what the station did during the license
21 term?

22 MR. LYNCH: Now and the license term.
23 We've changed a minute here or a minute there, but,
24 basically, over the entire period of time, we have
25 broadcasted approximately the same quantity.

1 MR. SCHONMAN: Then, the Bureau would have
2 no objection to that staying in.

3 JUDGE SIPPEL: All right. And that takes
4 care of paragraph 2.

5 Now we're on to paragraph No. 3.

6 MR. TILLOTSON: Object to the whole
7 paragraph. The first -- everything except the last
8 sentence, because the rate structure and what their
9 business judgments are of advertisers and so on at the
10 station is not relevant to programming.

11 I think the point that he's trying to make
12 is in the last sentence is the bulk of the PSAs are
13 broadcast during "premium time." There is specific
14 information later on being offered as to when YLR
15 broadcasts its PSAs and how many. This is conclusory.
16 The evidence is being offered in the form of the
17 attachment which gives the breakdown of when the PSAs
18 ran. And, therefore, I'd strike the first part as
19 being -- the rates information being not relevant, and
20 the balance of it about when it ran as being
21 conclusory. We could look to the evidence itself.

22 JUDGE SIPPEL: All right.

23 Mr. Schonman.

24 MR. SCHONMAN: I would tend to agree,
25 unless, of course, the beginning portion of the

1 paragraph tends to assist us in explaining the last
2 sentence.

3 JUDGE SIPPEL: All right. I hear you, the
4 premium time, then, is -- as it's stated in the first
5 sentence, Monday and Sunday, 6:00 a.m. to 7:00 p.m.?

6 MR. LYNCH: Monday through Sunday, excuse
7 me.

8 JUDGE SIPPEL: It says, "Monday and
9 Sunday."

10 MR. LYNCH: Well --

11 JUDGE SIPPEL: But that's supposed to be
12 Monday through Sunday?

13 MR. LYNCH: It's Monday through Sunday.
14 If you look down four lines, it's Monday through
15 Sunday, also.

16 JUDGE SIPPEL: Okay.

17 MR. LYNCH: That's strictly a typo.

18 JUDGE SIPPEL: -- you just got back at --
19 for Mr. Brandt not having signed his name.

20 MR. LYNCH: Two-way street. Thank you,
21 Your Honor.

22 JUDGE SIPPEL: Okay?

23 We'll put "through." We'll strike "and"
24 and we'll put "through." And we'll leave that in for
25 an explanatory -- for explanatory reasons.

1 And then I'm going to strike on page --
2 Exhibit 6, page 2, everything down to where it says,
3 "The bulk of WYLR's PSA." In other words -- the
4 language that reads, "This rate structure -- " all the
5 way down through "a highest rate was charged," as
6 irrelevant. And I'll leave the last sentence in.

7 MR. TILLOTSON: Your Honor --

8 JUDGE SIPPEL: Yes.

9 MR. TILLOTSON: -- I want to renew my
10 objection, though. That's conclusory and we don't know
11 whether -- I mean, we've got evidence later.

12 JUDGE SIPPEL: Well, he's going to have to
13 either come up with the goods or it's going to be
14 ultimately stricken as conclusory or it's going to turn
15 out that he's been trying to be misleading in any way
16 from what you confirmed, he's going to have to defend
17 his position on cross examination.

18 Let's start with paragraph 4 now. We're
19 on Exhibit 6, page 2. Is there any objection to this
20 as it reads?

21 MR. TILLOTSON: No.

22 MR. SCHONMAN: Yes.

23 JUDGE SIPPEL: All right. Go ahead, Mr.
24 Schonman.

25 MR. SCHONMAN: The Bureau objects to

1 paragraph 4 because it would appear that the
2 information relates to what the station is doing now,
3 rather than during the renewal period.

4 MR. LYNCH: Much the same logic is back in
5 paragraph 2. It's not intended to -- no, this -- I
6 have not changed over the license period.

7 MR. SCHONMAN: Then, the Bureau withdraws
8 its objection, based on that representation.

9 JUDGE SIPPEL: All right. Then, Exhibit 4
10 will come in. What about -- I'm sorry. Not Exhibit 4,
11 paragraph 4 of Exhibit 6 --

12 Next paragraph is paragraph 5.

13 MR. TILLOTSON: I object to paragraph 5 in
14 its entirety.

15 JUDGE SIPPEL: His ascertainment. He's
16 telling us how he does his ascertainment.

17 MR. TILLOTSON: Well, but -- yes and no.
18 He's telling us in only the broadest and vaguest ways
19 by saying, "Over a number of years, these individuals
20 have engaged in the ascertainment and these are
21 organizations we've contacted."

22 The critical thing in a renewal expectancy
23 -- and I think it's in the Metroplex case or somewhere
24 -- is tying community issues to the programming that's
25 presented.

1 Ascertainment is relevant if ascertainment
2 identifies issues in the community. So this starts
3 with -- these people contacted various organizations
4 over a fairly broad expanse of time without the time
5 frame even really being -- I mean, the word
6 "continually" is there; but nowhere does it even tell
7 us that these contacts were made with these
8 organizations before or after the renewal period. It's
9 a very broad time frame, a very broad concept, that
10 they contact people and organizations but not any
11 information about what they learned. And it's the what
12 they learned that we need to know to relate it then to
13 what programs they actually aired to determine if they
14 get a renewal expectancy.

15 JUDGE SIPPEL: Well, Mr. Schonman.

16 MR. SCHONMAN: Mr. Tillotson makes a very
17 valid point, Your Honor.

18 Normandy Broadcasting can speak with as
19 many people as it wants; but if it doesn't learn
20 anything and ascertain what the needs and interests of
21 the community are, then all the talking in the world is
22 useless.

23 JUDGE SIPPEL: Well, if that's -- if
24 that's a weakness with his case, then so be it; but it
25 certainly is -- the story that is being told in

1 paragraph 5 is a relevant story to tell. Whether it's
2 being told the way it should be told is something else
3 again.

4 You know, one tactic or one consideration
5 would be would be just not to cross examine in that
6 area and if it falls it falls.

7 Well -- if there is -- I'm not sure you do
8 have an objection. You have criticisms. I'm not sure
9 it's an objection, Mr. Tillotson, but if it is it's
10 overruled for --

11 MR. TILLOTSON: Thank you. The objection
12 was relevancy, and I accept your ruling.

13 JUDGE SIPPEL: And do you also have an
14 objection or is this -- Mr. Schonman, is it in the form
15 of an objection? Because I'll rule on it if it is.

16 MR. SCHONMAN: Yes, the Bureau would
17 object to this on relevancy grounds.

18 JUDGE SIPPEL: I'm going to overrule the
19 objection, because, as I say, I believe that -- is
20 relevant in the broad sense of the term. And this is
21 just Mr. Lynch's way of relaying some information
22 that's critical information. I will rule on it at
23 another time.

24 Now, I'm taking this information that he's
25 given me all the way over to page 6, 4, where he's -- I

1 mean, this is a continuation of listing just groups of
2 organizations that he's contacted.

3 And let's come down to Exhibit 6, page 4,
4 in the middle of the page. It says, "In addition to
5 organizations -- " Do I have the same objection? This
6 -- run all the way through paragraph 5.

7 MR. TILLOTSON: Yes -- yes, Your Honor --

8 JUDGE SIPPEL: -- well, my ruling is what
9 my ruling is.

10 Let's move down to paragraph 6, then, on
11 Exhibit 6 --

12 MR. TILLOTSON: Well, again, to speed
13 along the process, Your Honor, I have objection,
14 really, throughout the entire Exhibit, the same type of
15 objections that the -- We get, for example, in 6 this
16 broad, conclusory kind of things. "Normandy,
17 responsibly, presents public service programming," that
18 there are ascertained needs, and, therefore, they
19 direct programming to meet the needs. It refers to the
20 two stations. It mixes. It talks about them. And my
21 -- I -- object to it all as not --

22 JUDGE SIPPEL: Yes.

23 MR. TILLOTSON: -- relevant, reliable,
24 probative as to the basic issue was what did this
25 station do to respond to needs of its community in a

1 programming fashion.

2 JUDGE SIPPEL: All right. Let me ask Mr.
3 Schonman what you have to say about --

4 MR. SCHONMAN: Well, to the extent that
5 the paragraph refers to the AM station, the Bureau
6 would object, because that's irrelevant what the AM
7 station is doing or did or did do at any time.

8 The paragraph, to some extent, is
9 conclusory; but I'm not going to object to the
10 paragraph because of that. I think it tends to be
11 rather harmless.

12 JUDGE SIPPEL: Well, I am --

13 MR. LYNCH: Your Honor.

14 JUDGE SIPPEL: Yes, Mr. Lynch --

15 MR. LYNCH: Excuse me. But it's meant --
16 basically, it's meant a flow on our ascertainment.
17 When we ascertain things, then what do we do with them?
18 And it's my responsibility as a licensee -- there are
19 some things for one station, some things for the other.
20 But this is just a flow from paragraph 5 trying to
21 explain how we find and how we meet the needs of the
22 community with our programming.

23 MR. SCHONMAN: But, Your Honor, it's
24 programming over the FM station only that we're --

25 JUDGE SIPPEL: This is -- this is --

1 again, this is another one of these -- I get my -- I
2 got to be sure that I got my paragraph right.

3 MR. TILLOTSON: 403.

4 JUDGE SIPPEL: Paragraph-403-type of
5 evidence. To the extent that it is relevant, it's
6 going to end up accusing more than it's going to help.
7 And I think Mr. Tillotson has some very good points
8 here. I mean, it's very conclusory. "Normandy
9 responsibly presents public service programming."
10 Well, that's what this case is all about.

11 And -- I mean, everybody's right on this.
12 Mr. Schonman, you're right. A lot of this is really
13 harmless error; but it's -- it doesn't help. I mean,
14 there's a lot of materials here to cover.

15 So I'm going to strike paragraph 6 in its
16 entirety -- pages -- Exhibit 6, pages 4 and 5. The
17 paragraph is numbered 6.

18 How about paragraph 7?

19 MR. TILLOTSON: My only problem with 7,
20 Your Honor, is that the second paragraph in 7, the
21 mixing, again, of the WSC and WYLR without -- you know
22 -- it confuses without focusing on what really is WYLR
23 doing as opposed to WWSC.

24 JUDGE SIPPEL: Well, Mr. Schonman.

25 MR. SCHONMAN: The objection that I have

1 is to the time frame, whether these representations
2 refer to the license term or to whether -- or to what
3 the station is doing right now.

4 MR. LYNCH: It says, "Specifically over
5 the license period -- of WYLR -- " And this also is --
6 it's -- at some point -- It's been argued because some
7 of the things in my public file were on WWSC and news -
8 - virtually all major newscasts, news stories that were
9 on WWSC were also on WYLR. And -- saying it wasn't on
10 the FM side, you know, when it was just put under a
11 heading of WWSC, which is not the truth.

12 JUDGE SIPPEL: I'm sorry -- what was not
13 the truth? You're going too fast for me.

14 MR. LYNCH: In a prior pleading -- pled
15 that there's nothing whatsoever on the FM and a quarter
16 here or there in the public file -- you know -- and the
17 heading on the sheet was WWSC.

18 But, again, virtually all major news
19 stories that were on WWSC were also on WYLR.

20 JUDGE SIPPEL: Well, this is -- again, I'm
21 -- this is not the way that -- this is not a well-
22 crafted paragraph.

23 MR. LYNCH: Would --

24 JUDGE SIPPEL: I'm going to give -- here
25 again, I'm going to give Mr. Lynch the benefit of his

1 not having the benefit of counsel. Give him the
2 benefit of not having the benefit. That's something --

3 But I -- in my discretion, I'm going to
4 allow that paragraph to remain the way it is.

5 MR. SCHONMAN: Your Honor, can we strike
6 out references to the AM station?

7 MR. LYNCH: I was about to suggest that.
8 I have no problem with that.

9 JUDGE SIPPEL: Yes. That would be an
10 appropriate way to -- but, again, you know, this
11 doesn't -- it -- I say that -- I leap to say that; but,
12 then, it cuts both ways, because, on cross examination,
13 the fact that he is alluding to both stations may
14 undercut his credibility or the reliability of this
15 evidence. I don't know.

16 MR. TILLOTSON: I would object to taking
17 out the references because -- for exactly that reason,
18 because it would then read, as it wasn't intended to --
19 this is all an FM effort. And, yet, it's clear that
20 this is a joint effort, written and produced by
21 Normandy employees at the stations -- plural -- common
22 studios.

23 MR. LYNCH: Which is what I'm --

24 JUDGE SIPPEL: Well, go ahead --

25 MR. LYNCH: That's exactly -- that's how

1 it works.

2 JUDGE SIPPEL: Well, that's how he works -
3 - Well, I can understand why Mr. Tillotson wants the
4 record to be that -- There's no sense in us sitting
5 here and editing out that which is -- well, it just
6 doesn't make sense to go into that editing process with
7 this evidence.

8 So to the extent that there are objections
9 outstanding with respect to paragraph 7, I'm going to
10 overrule the objection and allow 7 to stay as it is.

11 Paragraph No. 8, Exhibit 6, page 5. It
12 starts off with, "Throughout the license period," so
13 I'll take that to bring it into the relevancy of the
14 time period, in any event.

15 Any other objections?

16 MR. TILLOTSON: Well, in view of Mr.
17 Lynch's clear clarification of how the operation
18 functions, I suppose that maybe this is more something
19 for cross examination later; but it seems that this --
20 rather than WYLR in the introductory portion it should
21 consistently say "Normandy," because it's a joint
22 Normandy operation and it's written as though it was an
23 individual or specific WYLR operation.

24 JUDGE SIPPEL: Mr. Lynch, do you want to
25 respond to that?

1 MR. LYNCH: I can go -- as long as YLR
2 gets full credit for the time and the quality of the
3 news that's going on the air, any way you want to write
4 it is fine.

5 JUDGE SIPPEL: Well --

6 MR. LYNCH: Again, the facts are the
7 facts.

8 JUDGE SIPPEL: We don't do that. You
9 don't say, "Give me this and then I'll agree with
10 that." We just want to know factually.

11 MR. LYNCH: Factually, Normandy employs
12 three newspeople, which is far in advance of anything
13 in the community --

14 JUDGE SIPPEL: But, factually --

15 MR. LYNCH: -- over the license period.

16 JUDGE SIPPEL: Factually, is Mr. Tillotson
17 correct that really paragraph 8 really should read that
18 it is an essential part of WWSC and WYLR, local
19 newsgathering efforts, that were part of a combined
20 news effort?

21 MR. LYNCH: In that -- I was trying to
22 focus on YLR --

23 JUDGE SIPPEL: I know you were.

24 MR. LYNCH: -- and it's accurate. I mean,
25 you can put in WWSC and it is still accurate.

1 JUDGE SIPPEL: I think this is all grist
2 for cross examination.

3 MR. TILLOTSON: I think you're right, Your
4 Honor.

5 JUDGE SIPPEL: I don't know why I'm trying
6 to be so patient with --

7 But does the Bureau have a position on
8 this --

9 MR. SCHONMAN: The Bureau has no objection
10 to paragraph 9. I'm sorry, paragraph 8.

11 JUDGE SIPPEL: Paragraph 8. Thank you.

12 Okay. And that carries over -- that
13 paragraph, that is, carries over to Exhibit 6, page 6.
14 That brings us to paragraph No. 9.

15 Again, it leads off with, "Over the
16 license term -- "

17 Is there an objection?

18 MR. TILLOTSON: No, Your Honor, I think as
19 I look through it -- whatever -- pinning it down --

20 JUDGE SIPPEL: That's all right. I'm not
21 asking you to concede that this is --

22 MR. TILLOTSON: No, I understand.

23 JUDGE SIPPEL: I'm just saying that is
24 there an objection?

25 MR. SCHONMAN: From the Bureau.

1 JUDGE SIPPEL: -- paragraph -- Let's start
2 with -- there's paragraph 10, 11, 12 and 13 on Exhibit
3 6, page 7.

4 MR. TILLOTSON: I would object to 10. The
5 fact that somebody broadcast EBS tests as required by
6 the Commission's rules is not in any way relevant to
7 programming. Every radio station in America is
8 required to monitor and broadcast the EBS test, and if
9 they don't do it, they get fined.

10 JUDGE SIPPEL: Well, this -- Mr. Schonman,
11 hear from your vantage point.

12 MR. SCHONMAN: Well, it is true that
13 stations are required -- and the fact that he's doing
14 it, he certainly doesn't get any points for doing that.
15 I don't see any reason to strike it.

16 What I object to in paragraph 10 is the
17 reference -- "Thank God, there was never an actual
18 emergency over this period." I don't know how that
19 contributes to --

20 JUDGE SIPPEL: Well --

21 MR. LYNCH: I have no problem with that.

22 JUDGE SIPPEL: You have no problem with
23 what?

24 MR. LYNCH: With striking --

25 JUDGE SIPPEL: Well, let's strike it.

1 Let's --

2 MR. LYNCH: Yes --

3 JUDGE SIPPEL: -- strike it. Let's --

4 MR. TILLOTSON: The whole paragraph?

5 JUDGE SIPPEL: No, no, no, just that one
6 sentence, that last sentence.

7 MR. LYNCH: As far as an EBS station, you
8 know, we are; and we're looking to try to reconstruct
9 the non-entertainment programming that we --

10 JUDGE SIPPEL: Don't -- don't -- don't
11 talk to what hasn't been stricken yet. Now, you're --
12 so far, you've got -- except for that one sentence.

13 Let me just say this about that:
14 Everything that's been said has been correct, Mr.
15 Tillotson, in terms of the obligations, etc.

16 But this is -- again, this is another one
17 of these little pieces of evidence that carries over
18 into this mitigation argument that -- it's in the
19 record for what it's worth. And it can be looked to in
20 those two capacities.

21 MR. TILLOTSON: I would object to letting
22 it in on that ground and say that anything -- that any
23 statement that he complied with, the EBS rules or some
24 other rule of the FCC, mitigates.

25 JUDGE SIPPEL: I'm not inviting it. I'm